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FEDERAL COMMUNICATIONS COMMISSION

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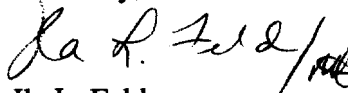
Office the Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, DC 20554

Re: Comments in Response to Notice of Proposed Rulemaking
In the Matter of Implementation of Sections of the Cable Television Consumer
Protection and Competition Act of 1992 - - Rate Regulation
Uniform Rate Setting Methodology
FCC 95-472
CS Docket No. 95-174

Ladies and Gentlemen:

Enclosed please find an original and nine copies of Comments in the above referenced Rulemaking file on behalf of the Cities of Cape Coral, Florida; Greenacres, Florida; Lantana, Florida; Miami, Florida; North Palm Beach, Florida and Pensacola, Florida.

Sincerely,


Ila L. Feld

ILF/mmt

cc: Bruce Conroy, Esquire
Tedd Povar
Allen Owens
Ana Proenza
Carlos Smith
A. Quinn Jones, Esquire
Dennis Kelly
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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, DC 20554

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FEDERAL

In the Matter of)
)
Implementation of Sections of the)
Cable Television Consumer Protection)
and Competition Act of 1992 - - Rate Regulation)
)
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CS Docket No. 95-174

To: The Commission

Comments in Response to Notice of Proposed Rulemaking

The Cities of Cape Coral, Florida; Greenacres, Florida; Lantana, Florida; Miami, Florida; North Palm Beach, Florida; and Pensacola, Florida ("Cities") hereby submit Comments in opposition to the Commission's proposal to allow cable operators to establish uniform rates on a regional multiple franchise basis. The uniform rate setting system will have the practical effect of emasculating local franchising authorities' power to regulate rates and will undercut local franchising authorities' ability to require or negotiate specific benefits and services to satisfy the specific cable related needs and interests of subscribers in their communities. Lastly and most importantly, it is not at all evident from the Commission's Notice of Proposed Rulemaking or any

individual cable operator's proposal¹ to implement a uniform rate setting system that consumers will realize any benefit from a uniform regional pricing structure.

Pursuant to the 1992 Cable Act and FCC rules and regulations implementing the Act, local franchise authorities were given the authority to regulate charges for basic cable television (BST) and associated equipment consistent with the Commission's rules. The FCC retained jurisdiction to regulate rates for the cable programming service tier (CPST) upon receipt of a valid timely filed complaint. Under the existing rules, both the BST and CPST rates are established on the basis of an individual franchise area. Moreover, cable operators are required to maintain uniform rate structures within each individual franchise area. The Commission is now proposing to modify the rules to allow cable operators to establish uniform rates for uniform cable services offered in multiple franchise areas.

DISCUSSION

1. **Expansion of the uniform rate structure beyond the geographic definition of the individual franchise area is contrary to the Cable Act, current FCC rules and decisions and the best interests of cable subscribers.**

The expansion of uniform rate regions beyond an individual franchise area could substantially limit the local franchising authorities' ability to regulate rates and enforce the uniform rate structure requirement of the Cable Act.² In the Report and Order adopted April 1, 1993 the Commission addressed the issue of uniform rate regions and clearly concluded that "a system's

¹ See In re Petition of Media One, Inc. for Waiver Permitting Uniform Cable Programming Service Rates in Atlanta Metro Area, CSR-4630-R, (December 5, 1995).

² 47 U.S.C. § 543 (d)

franchise area properly defines that “geographic area” within which uniformity of rate structure is mandated.” Further, the Commission went on to state “We believe that it be would an anomalous result to give a broad interpretation to geographic area, thus requiring, for example, that a rate structure must be uniform throughout a state or within a system, while at the same time investing local franchising authorities with some authority to determine the extent to which discrimination in rate structure may take place within the franchise area. A uniform rate structure requirement for an area larger than a franchise area could substantially limit local authorities ability to exercise the power to prohibit discrimination. We do not believe that Congress intended this result.”³

Moreover, a uniform rate structure is inconsistent with recent FCC decisions with respect to the permissible jurisdiction of local franchising authorities. Specifically, the Commission has recently held that a cable operator’s basic service and equipment may be subject to regulation only by a single certified authority and that duplicative certification and regulation is inconsistent with federal standards.⁴ However, in the case of a uniform rate region that crosses franchise lines, the cable operator would in fact be subject to the jurisdiction of multiple authorities in direct conflict with the current rules.

In addition, allowing cable operators to implement uniform pricing across multiple systems would be grossly unfair to subscribers. As a result of uniform rates spread over a multiple system region, the upgrade of selected systems such as those in high income, high density areas, would be subsidized by subscribers in those areas not being upgraded, thus, a substantial number of

³ Report and Order, FCC Rec’d 5896-5897.

⁴ In the matter of Dynamic Cablevision of Florida, Limited, DA 95-1582, (July 14, 1995).

subscribers could find themselves paying more and receiving less in the way of available cable service.

Furthermore, in light of the variance in laws from one state to another, uniform rate regions should not be permitted to cross state boundaries.

2. A multi-franchise uniform rate system will deny local franchise authorities the ability to negotiate specific public, education and government services and benefits.

Most local franchise authorities rely on their local cable operator to provide critical services to their communities, including but not limited to, service to schools, government channel capacity and interconnection of municipal offices. A uniform regional price scheme will result either in communities being denied these services or in cross subsidization. The alternative of cable operators agreeing to allocate the costs of public/education/government requirements on an individual franchise basis results, in fact, in the operator having a non-uniform regional rate system.

3. Neither rate setting methodology proposed by the Commission provides subscribers with adequate protection against unjustifiable cable rate increases.

The Commission has proposed establishment of a uniform rate setting methodology using one of two approaches. Under either approach, operators would be permitted to include unregulated areas within the uniform region. By allowing operators to include unregulated areas in the uniform region any average “blended rate” would, in all likelihood, be significantly higher than those rates that the cable operator could justify under the current rules since the unregulated rates being factored into the calculation will, in all likelihood, outweigh regulated rates.

a. Methodology I

Under the first approach, a cable operator first would determine or identify BST and CPST

rates established in each local franchise area pursuant to the existing rate regulations. BST rates would then be equalized by reducing all BST rates charged in a relevant region to the lowest regulated BST rate charged in any one franchise area located in the region. The new uniform BST rates would then constitute the operator's maximum permitted rate for basic cable service in all of the relevant franchise areas. The operator would then add the total amount of "lost revenue" resulting from the various BST rate reductions to the total CPST revenues to which the operator is otherwise entitled under the existing rules for all franchise areas in the region, the operator would then determine a uniform CPST rate by dividing the total of the displaced BST revenues and existing CPST revenues by all CPST subscribers in the region and increase the rates accordingly.

Implementation of this option would result in CPST subscribers subsidizing BST subscribers. Thus, those wealthier communities with more CPST subscribers will in fact be subsidizing the lower income communities where cable subscribers are more heavily weighted towards BST subscribers. From a procedural standpoint, it is not at all clear how the Commission in reviewing the CPST rates will verify the amount of the BST lost revenue being added to the CPST since a true verification of the operator's submission would require the Commission to analyze the BST rate for each local franchise authority, the operator's revenue calculation and the subsequent CPST adjustment. Unless the Commission plans to significantly increase the size of its staff, this does not appear to be a realistic undertaking.

b. Methodology II

Under the Commission's alternative approach for establishing uniform rates for uniform services, a cable operator would determine or identify BST and CPST rates charged in each of the relevant franchise areas pursuant to the existing rate regulations. After aggregating the BST rates

and revenues for all franchise areas in the region and then the CPST rates and revenues for all franchise areas, the operator would determine a single “blended rate” for BSTs and a “single rate” CPSTs to be charged in all franchise areas in the region pursuant to a formula designed by the Commission.

The blended rates for BSTs and CPSTs would be determined by averaging the operator’s total BST and CPST rates respectively on a per subscriber basis for all subscribers in the region. In order to ensure that the establishment of the uniform rates is revenue neutral to the cable operator, the operator would then be required to justify its BST blended rates to each local franchising authority certified to regulate rates and the Commission would have jurisdiction to regulate the CPST rates.

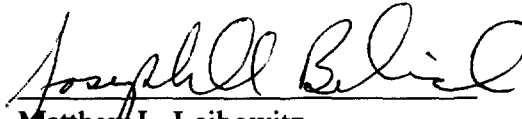
This option would require local franchise authorities to verify the operator’s blended BST rates. In light of the difficulty local franchise authorities have faced in reviewing cable operators’ justifications for rates in a single franchise area, it would seem highly unlikely from a practical standpoint that local franchise authorities would have the resources available to verify blended rates. Thus, the local franchise authorities’ ability to regulate rates would be illusory at best since the exercise of the authority would be too costly and time consuming for most local franchise authorities. Accordingly, implementation of this methodology would represent a reversal of current law that expressly allocates the burden of justifying rates to the cable operator.

CONCLUSION

The Commission’s proposal to allow uniform rates across multiple franchise areas offer significant benefits to cable operators without any corresponding benefits or protections to local franchising authorities and subscribers. Accordingly, the proposal is inconsistent with the policy

and intent of the 1992 Cable Act and should not be adopted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joseph A. Belisle", written over a horizontal line.

Matthew L. Leibowitz

Joseph A. Belisle

Ila L. Feld

Counsel for

City of Cape Coral, Florida

City of Greenacres, Florida

City of Lantana, Florida

City of Miami, Florida

Village of North Palm Beach, Florida

City of Pensacola, Florida

January 9, 1996

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CERTIFICATE OF SERVICE

I, Marlene M. Torres certify that a copy of the foregoing Comments, In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 - - Rate Regulation, Uniform Rate Setting Methodology were sent via U.S. Mail on January 9, 1996 to:

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